**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1390 OF 2007.**

S.R.Shukla & Associates & Anr. ...Plaintiffs.

V/s.

Sanko Engg. Co.Pvt.Ltd. ...Defendants.

Mr.S.U.Kamdar a/w. V.V.Kamdar for the defendant.
Mr.M.S.Udesh a/w. Ms. C.D.Rajani for the respondent no.1.

CORAM : S.J. VAZIFDAR J.

DATE : 19TH JULY, 2007.

P.C. :-

1. Rule. Rule returnable and heard forthwith.

2. The petitioner has impugned an order refusing the condonation of delay of 18 days according to the petitioner and 31 day according to the respondent in filing the appeal before the Appellate Bench of the Small Causes Court. The order appealed from rejected the petitioners' application under Order VII, Rule 11 of the C.P.C.

3. It appears that there were bona-fide reasons for the delay. The certified copy of the Judgment, which was applied for inadvertently instead of having applied for a certified copy of the Judgment and order. This inadvertent error was

rectified later. In these circumstances, it would not be fair to dismiss the appeal on the ground of delay. This is a fit case for exercise of discretion of condonation of delay.

4. It may also be noted that the condonation of delay would not even prejudice the respondents in any manner. The point could always be argued by the petitioner at the final hearing of the suit which has been filed by the respondents.

5. In the circumstances, the impugned order is set aside. The appeal shall be heard and the same shall be decided on merits. The observations in the impugned order shall not be binding on the learned Appellate Bench. All contentions between the parties are kept open including the maintainability of the appeal. The rule is made absolute in the above terms.